

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

<div>IN RE:</div> <div>LYLE SNITKER II,</div> <div>Complainant,</div> <div>vs.</div> <div>AT&amp;T COMMUNICATIONS OF THE MIDWEST, INC.,</div> <div>Respondent.</div>	<div>DOCKET NO. C-04-150</div>
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**ORDER DENYING REQUEST FOR FORMAL PROCEEDING**

(Issued July 22, 2004)

On June 23, 2004, AT&T Communications of the Midwest, Inc. (AT&T), filed with the Utilities Board (Board) a request for formal complaint proceedings pursuant to 199 IAC 6.5 and 199 IAC 6.8, asking that the Board docket the proposed resolution issued by Board staff in C-04-150, relating to AT&T. Based upon the record assembled in the informal complaint proceedings (which are a part of the record in this proceeding pursuant to 199 IAC 6.7), the events to date can be summarized as follows:

On June 2, 2004, Lyle Snitker II filed an informal complaint with the Board against AT&T alleging that the long distance service for an account Mr. Snitker II established for his father, Lyle Snitker, was changed without Mr. Snitker II's authorization. Mr. Snitker II stated in the complaint that he is solely responsible for

paying the bills for the account and that his social security number and date of birth are on the account. Mr. Snitker II called AT&T after receiving a bill from Qwest Corporation (Qwest) dated May 19, 2004, that contained AT&T long distance charges totaling \$172.65. In response to Mr. Snitker II's inquiry, AT&T explained that Mr. Snitker authorized the switch of long distance service on April 9, 2004, and played the third-party verification recording for Mr. Snitker II. Mr. Snitker II disputed the charges on the basis that there is much confusion on the recording and that Mr. Snitker II is the only person authorized to make long distance service changes. Board staff identified the matter as C-04-150 and, pursuant to Board rules, on June 7, 2004, forwarded the complaint to AT&T for response within ten days.

AT&T responded to the complaint on June 8, 2004, indicating that the service was changed as a result of a customer-initiated call from Mr. Snitker on April 7, 2004. AT&T filed a copy of the recording of the third-party verification. AT&T indicated that Mr. Snitker authorized the change of interLATA long distance service, intraLATA (or local toll) service was not switched, and Mr. Snitker was removed from AT&T long distance on June 2, 2004. AT&T noted that the customer was disputing AT&T charges totaling \$172.65. AT&T stated that because there was no evidence of an unauthorized switch, it did not reimburse any fees for switching the preferred inter exchange carrier. AT&T did not respond to Board staff's request to provide proof that a written notice of the service change was provided to the customer within 30 days after the service change.

Staff learned from Qwest that Mr. Snitker II is the party responsible for billing for the account and Mr. Snitker is authorized to make account changes.

Staff's June 10, 2004, proposed resolution concluded that AT&T did not receive proper authorization to switch long distance service. AT&T was directed to fully credit the account and to credit any switching fees associated with the change of long distance service to and away from AT&T. Staff concluded that Mr. Snitker did not understand the AT&T services offered by the telemarketer. Staff found that the recording of the third-party verification is unclear as to whether Mr. Snitker thought he was ordering an AT&T calling card or an AT&T prepaid calling card or if he intended to switch long distance service to AT&T.

In the recording of the third-party verification, Mr. Snitker answered in the affirmative that he is authorized to make changes for the account, volunteered that he is getting long distance service on AT&T, and that he does not want AT&T local service. Mr. Snitker also answered in the affirmative that he would like to use AT&T when making long distance calls. However, when the verifier asked if Mr. Snitker would like to use AT&T when making local toll calls, Mr. Snitker responded, "I use a credit card, yes." The verifier stated, "this is for local toll" and that he needed a yes or no answer. Mr. Snitker responded, "I am not going to tell you guys I am going to use your, your phone, your AT&T number, for all calls. The credit card calls, I want on AT&T." The verifier informed Mr. Snitker that he needed a "yes" or "no" answer and again asked if it is correct that Mr. Snitker would like to use AT&T service when making local toll calls. Mr. Snitker answered, "No," and started to say more, and the

verifier interrupted and informed him that he will not receive AT&T local toll service. From this rather confused exchange, staff concluded that the most that can be said is that Mr. Snitker wanted to make credit card calls using AT&T's service.

In its June 23, 2004, filing with the Board, AT&T stated that because it complied with Iowa law regarding changing a customer's provider, it cannot be guilty of slamming. AT&T stated that Mr. Snitker was a customer authorized to make changes to the account and that it complied with 199 IAC 22.23(2) by sending Mr. Snitker II a welcome package notifying him that his long distance carrier had been changed to AT&T, explaining all associated charges and fees, and providing a toll-free number by which he could make inquiry about the statement. AT&T further noted that, as a courtesy, it adjusted the account for all operator-assisted calls made from the customer's residence to the discounted rate of \$0.05 per minute that the customer would have been charged under the calling plan had the calls been dialed directly. This resulted in a credit of \$196.89, leaving a balance of \$46.60. AT&T made no reference to outstanding charges for direct-dialed calls or the disputed amount of \$172.65. AT&T asked that the Board staff modify its proposed resolution to find that no slamming violation occurred, that the Board reject the proposed resolution if it is not modified, or that a formal proceeding be initiated to allow AT&T to put relevant law and evidence into the record.

In response to AT&T's request, staff analyzed the case again and concluded that the proposed resolution should not be modified to present a finding that no slam had occurred. Staff notified the parties of AT&T's request for a formal proceeding.

Staff asked AT&T to clarify what AT&T believes Mr. Snitker intended when he informed the verifier that he was not going to use the AT&T number for all calls and that he wants the credit card calls on AT&T.

On July 6, 2004, AT&T filed its response to staff's request for clarification, stating that it would be unprofessional and illogical for AT&T to try to determine the motives or intentions behind a customer's requests and that it is impossible for AT&T to answer staff's question. AT&T did state that it is reasonable to presume that Mr. Snitker may have intended not to use AT&T for all of his toll calls, despite choosing AT&T as his carrier.

The Consumer Advocate Division of the Department of Justice (Consumer Advocate) responded to staff's inquiry on July 7, 2004. Consumer Advocate noted that there was sufficient lack of clarity and understanding as to what was being bought and sold to support staff's conclusion that AT&T lacked the required authorization for the switch. Consumer Advocate did note that there were mitigating circumstances in this case. The call was initiated by the customer and there was apparently no intent to deceive on the part of AT&T. For these reasons, Consumer Advocate did not seek a civil monetary penalty in the case.

Iowa Code § 476.3 (2003) provides, in relevant part, that the Board shall grant a request for formal complaint proceedings whenever the Board determines there are reasonable grounds for investigating a complaint. Here, the Board agrees that there are no reasonable grounds for further investigation. The Board finds that the recording of the third-party verification is, at best, inconclusive. Mr. Snitker states

that he wants to use AT&T for long distance. However, the conclusiveness of this statement is diminished by Mr. Snitker stating later in the conversation that he was not going to say that he would use AT&T for all calls and that he wanted the credit card calls on AT&T. Subparagraph 199 IAC 22.23(2)"a"(3) requires that the verification include a clear and conspicuous confirmation that the customer has authorized a change in carrier. Because the third-party verification submitted in this case lacks sufficient clarity for the Board to find that AT&T obtained a valid authorization to switch Mr. Snitker's long distance service, the Board will not modify the staff's proposed resolution. The Board will deny AT&T's request for formal proceeding.

**IT IS THEREFORE ORDERED:**

The request for formal proceeding filed by AT&T Communications of the Midwest, Inc., on June 23, 2004, is denied, pursuant to Iowa Code § 476.3 (2003).

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 22<sup>nd</sup> day of July, 2004.